



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Robert G. Burnley
Director

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Piedmont Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

A SPECIAL ORDER BY CONSENT ISSUED TO

TED AND GOLDIE UPTON

UPTON ENTERPRISES INC.

STONY CREEK CONVENIENCE STORE

UNDERGROUND STORAGE TANK FACILITY # 4036918 AND POLLUTION COMPLAINT #99-4326

12427 Sussex Drive, Stony Creek, Virginia

SECTION A: Purpose

This is a Special Order by consent issued under the authority of §§ 62.1-44.15 (8a) and (8d) of the Code of Virginia issued by the State Water Control Board between the Board and Ted and Goldie Upton and Upton Enterprises to resolve certain violations of the State Water Control Law and regulations at Underground Storage Tank Facility # 4009154 and regarding Pollution Complaint #96-4120.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. "Code" means the Code of Virginia (1950), as amended.
3. "Department" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. “Facility” means Ted and Goldie Upton’s real property and UST facility known as Stony Creek Convenience Store located at 12427 Sussex Drive in Stony Creek, Virginia.
6. “Order” means this document, also known as a Consent Special Order.
7. “Regional Office” means the Piedmont Regional Office of the Department.
8. “The Regulation” means 9 VAC 25-580-60 (Upgrading of Existing UST Systems), which requires that all USTs meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
9. “UST” means underground storage tank.

SECTION C: Findings of Fact and Conclusions of Law

1. Ted and Goldie Upton are the owners of the Facility located at 12427 Sussex Drive in Stony Creek that contains USTs. The facility is subject to Code § 62.1-44.34:20 of the State Water Control Law.
2. Ted and Goldie Upton are UST owners and/or operators within the meaning of Code § 62.1-44.34:8.
3. On February 10 and 11, 1999 F.W. Baird of Petersburg Virginia excavated, removed and disposed of one 8,000-gallon diesel, one 8,000-gallon gasoline, one 4,000-gallon gasoline, one 10,000-gallon diesel, and one 2,000-gallon kerosene UST from Stony Creek Convenience Store. During the removal of the tanks, a petroleum release from a tank leak was observed.
4. On April 28 and 29, 1999 three groundwater monitoring wells were installed at the facility and then gauged for the presence of free product. Petroleum impact to groundwater was detected in all of the monitoring wells.
5. On June 18, 1999, the Department received a site characterization report from the Upton’s consultant B&C Services. After the Department requested additional information, B&C Services submitted an amended report on October 26, 1999.
6. On October 30, 2000, the Department received a corrective action plan from Stony Creek. The plan was approved by the Department on October 23, 2001.
7. On February 26, 2002, the Department sent the Upton’s a letter reminding them that the first CAP implementation Report was due on April 26, 2002.

8. On June 18, 2002, DEQ issued a Warning Letter reminding the Uptons of the CAP requirement and extending the due date to July 10, 2002.
9. On December 18, 2002, the Department issued an NOV to Ted and Goldie Upton for failing to implement the corrective action plan.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of its authority in Code §§ 62.1-44.15 (8a) and (8d), orders Ted and Goldie Upton and Ted and Goldie Upton agrees:

1. To perform the action described in Appendix A of this Order.
2. Ted and Goldie Upton shall pay a civil charge of \$5,000. Payments shall be made in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
August 1, 2004	\$625
November 1, 2004	\$625
February 1, 2005	\$625
May 1, 2005	\$625
August 1, 2004	\$625
November 1, 2004	\$625
February 1, 2005	\$625
May 1, 2005	\$625

The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Upton Enterprises Inc.. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Ted and Goldie Upton, for good cause shown by Ted and Goldie Upton, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. In the interest of resolving this matter without delay and expense of litigation Ted and Goldie Upton agree to the entrance of this Consent Order, but neither admits nor denies the Findings of Fact or the Conclusions of Law herein.
4. Ted and Goldie Upton consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Ted and Goldie Upton declare they received fair and due process under the Virginia Administrative Process Act, Code §§ 9-6.14:1 *et seq.*, and the State Water Control Law, and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Ted and Goldie Upton to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Ted and Goldie Upton shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Ted and Goldie Upton must show that such circumstances resulting in noncompliance were beyond their control and not due to a lack of good faith or diligence on their part. Ted and Goldie Upton shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
- a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Ted and Goldie Upton intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Ted and Goldie Upton. Notwithstanding the foregoing, Ted and Goldie Upton agree to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Ted and Goldie Upton. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Ted and Goldie Upton from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Ted and Goldie Upton voluntarily agree to the issuance of this Order.

And it is so ORDERED this 21st day of June, 2004.

Gerald Seely Jr. (for)
Robert G. Burnley, Director
Department of Environmental Quality

Ted and Goldie Upton voluntarily agree to the issuance of this Order.

Date:

2-26-04

By:

Ted Upton
Goldie Upton

Commonwealth of Virginia

City/County of Sussex

The foregoing document was signed and acknowledged before me this 26 day of
February, 2004, by Ted + Goldie Upton.
(name)

Patricia M. Taylor
Notary Public

My commission expires: 9-30-04

Appendix A
Ted and Goldie Upton
Stoney Creek Convenience Store

Ted and Goldie Upton shall:

1. Within 15 days of the issuance of this Order, resume the remediation of the facility by implementing the Department approved corrective action plan.
2. Submit quarterly reports to the Department describing in detail all the monitoring and corrective action activities performed at the facility. The reports are due on the following schedule March 10, June 10, September 10, December 10 until the Order is closed.